IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.726 OF 2005

Rajendrakumar Vithoba Koyande,
of Bombay, Indian Inhabitant,
Age 42 years, residing at
Dr.D.B. Marg, Police Line,
'A' Block, Room No.53, Grant Road,
Bombay 400 007. Petitioner

vs.

1. The General Manager,
through Central Railway,
Office of the Divisional Manager,
(Commercial), Chhatrapati
Shivaji Terminus,
Bombay 400 001.
Established under Indian
Railways Act, having its Divisional
Office at Chhatrapati Shivaji Terminus,
Bombay 400 001.

2. The Union of India
(Ministry of Railway)
New Delhi
(Copy to be served at Law
Deptt. Aayakar Bhavan,
Mumbai). Respondents

Mr.A.V.Chatuphale for the petitioner.

None for the respondents.

CORAM : F.I.REBELLO &
ANOOP V. MOHTA,JJ.

DATED : 13th December, 2006

ORAL JUDGMENT (Per Anoop V. Mohta,J.).

The petitioner is a handicapped person. He was running a telephone booth at the space provided by respondent no.1 as handicapped PCO Centre since 1979. Respondent no.2 issued a Circular and thereby converted all the PCO Centres as ISD, STD, FAX, internet centers

and to collect revenue. The respondents, based on the circulars, claimed various charges from the petitioner.

The petitioner was in arrears of various dues.

2. The petitioner therefore had filed a Suit in the City Civil Court at Bombay being Suit No.6516 of 00 and thereby challenged the policy decision of respondents dated 18th July, 2002. There was an ad-interim relief from taking any coercive action against the petitioner. However, the petitioner's advocate moved a purshis and had unconditionally accepted the said policy decision and time was sought to deposit the arrears in instalments of Rs.5,000/- per month. A Prayer was also made while withdrawing the said Suit to extend the ad-interim relief upto February, 2005. By an order dated 1th February 004 the learned Judge of the City Civil Court allowed to withdraw the Suit and notice of motion. However, on the condition that the petitioner-plaintiff should pay the arrears in monthly instalment of Rs.5,000/- commencing from 1st March, 2004 in addition to the current charges as per Rules. While disposing of the said Suit it was specifically observed that in the event of infringement of any of the terms of Railways other than the arrears, the Railways are at liberty to take action.

3. In pursuance to the policy dated 18th July 2002

another demand notice dated 16th December 2004 was sent. The reminder was sent on 15th January 2005 as there was heavy outstanding against the petitioner. The petitioner failed to make the payment.

4. Respondents by a notice dated 4th February 2005, demanded the land licence fee. from PCI Booth manned by handicapped person, like the petitioner from the year August, 1994 to April, 2002. Respondents again requested the petitioner to pay the said arrears.

5. Admittedly, the petitioner had preferred Writ Petition No.726/2005 on 15th February, 2005. By order dated 1st March, 2005 the matter was adjourned for the petitioner to give an undertaking and to state as to how he proposed to clear the arrears as per the chart dated 14th March 2005 given by the respondents. The petitioner failed to give any response to the same. Therefore, by an order dated 21st March, 005 the writ petition was dismissed. The petitioner, as recorded in the order dated 17th February, 2005, expressed his readiness to clear the arrears at the rate of Rs.5,000/- per month. Therefore, based on that notice was issued and this Court had stayed the eviction proceedings. The Apex Court by an order dated 4th September, 2006 remanded the matter back to dispose of the same on merit in accordance with law.

6. Heard the petition finally. There is no reply from the respondents.

7. Admittedly, the petitioner has unconditionally, as recorded, accepted the circular dated 18th July 2002 in toto and expressed his desire to pay the necessary dues. The interim relief was granted to him on a condition that he would deposit arrears in monthly instalments of Rs.5,000/- commencing from 1st March, 2004 and in addition to pay the current charges as per the Rules. It appears from the record and the demand notices that the petitioner, though got protection order, was unable to clear the arrears/dues, inspite of repeated notices. In view of this the submission that he being handicapped, the respondents should have considered his case sympathetically is not tenable. The allotment as granted to run the PCI Booth was itself in the category of handicapped person. The petitioner, therefore, cannot claim special benefit now in so far as the arrears of dues are concerned as he himself had accepted the policy decision and sought protection on the foundation of regular payment of Rs.5,000/- per month. It appears that till this date the petitioner has not made the said payment though got the order of protection from this Court. The petitioner is still in arrears of payment. In the facts and circumstances of the case,

therefore, the petitioner is estopped from raising the same challenge in the present petition surrounding the policy decision dated 18th July 2002.

8. However, considering the fact that the petitioner is handicapped and could not deposit the arrears which are dues from May 2002 to the tune of Rs.3,23,996/- plus Rs.89,078/- towards the land licence fee from August 1994 to May 2002, we are disposing of the present petition by observing that respondent no.1 to consider the representation made by the petitioner in this background sympathetically and pass appropriate order within a period of three weeks from the receipt of the representation. The petitioner to file representation within four weeks from today. The writ petition is dismissed accordingly.

(F.I. REBELLO, J.)

(ANOOP V. MOHTA,J.)